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5  
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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) No. CR 06-173 JCS  
11 )  
Plaintiff, )  
12 ) **MOTION TO CONTINUE SENTENCING**  
v. ) **HEARING; [~~PROPOSED~~] ORDER**  
13 )  
APPLE GATE, ) Date: January 30, 2007  
14 ) Time: 10:30 a.m.  
Defendant. ) Court: The Honorable Joseph C. Spero  
15 )  
\_\_\_\_\_ )

16 The parties hereby stipulate and request as follows;

- 17 1. This Court ordered that Mr. Gate be evaluated prior to sentencing on December  
18 15, 2006;
- 19 2. On or about December 27<sup>th</sup>, 2006 defense counsel contacted the VA Veteran's  
20 Mental Health clinic and spoke with Mr. Gate's treating physician, who agreed to  
21 perform the necessary analysis and mail all required reports to defense counsel;
- 22 3. On or about January 8, 2007, Mr. Gate's treating physician called and advised  
23 defense counsel by telephone message that she could not, by VA policy, perform  
24 the analysis requested by the Court;
- 25 4. On or about January 12, 2007, defense counsel called back to ask what type of  
26 analysis Mr. Gate's treating physician could perform. Counsel and the treating

1 doctor left each other a sequence of messages by which the treating doctor agreed  
2 to provide a comprehensive treatment summary in lieu of the analysis requested  
3 by the Court;

4 5. To date, defense counsel has not received the comprehensive treatment summary.  
5 Defense counsel is also in the process of finding a different doctor in the Eureka,  
6 California area to perform the analysis requested by the Court;

7 6. Mr. Gate's treating psychiatrist is extremely hard to reach. The VA Clinic  
8 receptionist only answers the phone and takes messages for the doctor; Mr. Gate's  
9 counsel has never been successful at reaching the doctor directly. After counsel  
10 for Mr. Gate leaves a message, the treating doctor calls back and leaves a  
11 message. There has been a phone tag problem that makes communication  
12 difficult;

13 7. The problem reaching the doctor has been compounded by the fact that, as of  
14 January 15, 2007, counsel for Mr. Gate has been in trial in *United States v. Quan*,  
15 04-323 WBS, between 8:30 and 4:30 each day (January 15, 2007 was an  
16 exception, but the VA Clinic was closed on this day due to the Martin Luther  
17 King day holiday.) During the week of January 22-26, counsel for Mr. Gate was  
18 in trial three days, and spent the other two largely at lengthy court appearances  
19 attending to her other cases. For example, on Tuesday, January 23, 2007, counsel  
20 for Mr. Gate was in Judge Larson's courtroom from 9:30-11:00 a.m.; in Judge  
21 Shubb's courtroom for pretrial matters from 1:30-4:30 p.m., and in Judge Alsup's  
22 courtroom for a supervised release hearing from 4:30-5:30 p.m. The amount of  
23 time defense counsel has spent in Court has made communications with the VA  
24 doctor impossible, given the fact that the doctor can never be reached live by  
25 telephone, and defense counsel could not be reached either, as she was in Court;

26 8. Today, January 29, 2007, the treating doctor is out of the office all day, and will

1 not be back until tomorrow. As such, it is difficult for defense counsel to predict  
2 when the treating doctor can complete (or, at least, mail) the treating psychiatrist's  
3 report;

4 9. It is very difficult for Mr. Gate to make Court proceedings in San Francisco, as he  
5 lives in Eureka and has no ability to drive to San Francisco. The lengthy trip  
6 requires Mr. Gate to find accommodations in San Francisco overnight and is  
7 difficult for him to manage. A continuance of the sentencing is requested to try to  
8 locate and arrange for the analysis requested by this Court, as well as to obtain the  
9 treating doctor's treatment summary;

10 10. USPO Sara Black has been notified of the requested continuance, and has no  
11 objection continuing the sentencing in this matter;

12 11. The parties thus stipulate and jointly request a continuance date of February 26,  
13 2007, at any time convenient to the Court;

14  
15 Dated: January 29, 2007

\_\_\_\_\_/S/  
ELIZABETH M. FALK  
ASSISTANT FEDERAL PUBLIC DEFENDER

16  
17  
18 Dated: January 29, 2007

\_\_\_\_\_/S/  
TRACIE L. BROWN  
ASSISTANT UNITED STATES ATTORNEY

19  
20  
21 I hereby attest that I have on file all holograph signatures for any signatures indicated by a  
22 "conformed" signature (/S/) within this e-filed document.  
23  
24  
25  
26

1 [PROPOSED] ORDER

2 For the reasons stated herein, the sentencing of the above-referenced case is hereby  
3 CONTINUED to Feb. 27, 2007 (Special Setting), at 2:00 P.M.

4 IT IS SO ORDERED

5  
6 Date: Jan. 29, 2007

